THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. No. 11631 of 2006

DATED: -10-2007

Between:-

Haji Osman s/o Haji Kadar.

..PETITIONER

And

The Commissioner of Civil Supplies, C.S. Department, Erramanzil, Somajiguda, Hyderabad and another.

..RESPONDENTS

THE HONOURABLE SRI JUSTICE P.S. NARAYANA

W.P. NO. 11631 of 2006

O R D E R

This writ petition is filed praying for issue of a writ of Certiorari or any other appropriate writ calling for records pertaining to DCS Progs No. E2/14318/2005, dated 28-02-2006 passed by the 1st respondent confirming the proceedings No. CS5/1435/2005, dated 21-12-2005 passed by the 2nd respondent and quash the same holding the same as illegal, arbitrary and unconstitutional and violative of principles of natural justice and pass such any other appropriate order or orders as this Hon'ble Court may deem fit and proper in the interest of justice.

2. Sri K. Jagadishwar Reddy, learned counsel representing the writ-petitioner, had taken this Court through the show cause notice, the charges framed, the explanation submitted, the order made by the 2nd respondent and also the order made by the 1st respondent, and would maintain that both these orders are in violation of principles of natural justice since the explanation given to the show cause notice had not been considered in proper perspective. Learned counsel also would explain that in view of

the said approach adopted by the authorities, which resulted in the cancellation of the license, serious prejudice was caused to the writ-petitioner. Learned counsel also pointed out the relevant portions of the counter affidavit filed by the respondents and further placed reliance on some additional material, which has been placed before this Court and would maintain that in the light of the same, the impugned order be set aside and the matter be remanded for fresh consideration.

3. On the contrary, the learned Assistant Government Pleader for Civil Supplies, would maintain that this is a clear case where the original authority and the appellate authority recording convincing reasons and absolutely there is no legal infirmity in the said orders and hence the writ petition is liable to be dismissed.

4. Heard the learned counsel on record and perused the material available on record.

5. It is stated by the writ petitioner that he is a wholesale kerosene dealer having license under the provisions of the Andhra Pradesh Petroleum Products (Licencing & Distribution) Order, 1980 and has been supplying kerosene to retail dealers without any complaint but quite surprisingly without any prior notice or enquiry, the 2nd respondent issued proceedings No. CS5/1435/05, dated 13-09-2005. Further, it is stated that the said order was issued, no doubt, basing on some reports but those reports were not served on the petitioner. It is also stated that the petitioner

filed a representation in detail dated 14-09-2005 to the 2nd respondent against the allegations made in the impugned order and the same had not been considered by the respondents. Further, a specific stand is taken that the allegations made in the impugned order are not correct. It is also pleaded that the petitioner was admitted in the hospital on 28-07-2005 with severe jaundice and he was unable to walk. It is also further stated that college going son of the petitioner, who is unaware of the rules, had distributed the kerosene to the Fair Price shops of Bhongir, Ramannapet, Valigonda and B.Ramaram Mandal without allotment orders in hurry manner with an intention to dispose off the kerosene quickly, as his cousin sister marriage was fixed in the month of November, 2005, that they had received 24 KL of kerosene upto 06-09-2005 and thereafter 12 KL of kerosene had been received to their wholesale point on 08-09-2005 in the night. It is also stated that due to sudden failure of the tanker in the midway, the kerosene had been transported with another tanker with a delay of two days. It is also stated that with regard to non-supply of kerosene to the fair price shop dealers for the month of August and September, 2005, it is not correct to say that the kerosene had not been supplied to the fair price shop dealers. It is further stated that the entire kerosene quota to the concerned fair price shop dealers of three Mandals had been distributed and obtained signatures on the bills. It is also further averred that the

petitioner has been maintaining all the records properly, but the order dated 13-09-2005 suspended the license of the petitioner had been issued basing on the reports which were admitted behind the petitioner's back without giving opportunity to produce the records. It is also stated that the petitioner filed W.P. No. 21024 of 2005 on 13-09-2005 and the Joint Collector, Nalgonda allowed the same on 30-09-2005, that once again the Joint Collector, Nalgonda, passed the impugned order dated 21-12-2005 cancelling the license of the petitioner, though elaborate explanation is filed explaining the manner of each charge, that the 2nd respondent on the grounds not mentioned in the show cause notice and without furnishing the copies of reports cancelled the license of the petitioner on erroneous grounds. As the respondents without following the principles of natural justice cancelled the license of the petitioner without having need and without hearing the petitioner especially in the light of the facts of the case. It is stated that originally M/s. Abdul Sattar Saleh Mohanmmed and Keshavulu were partners. Abdul Sattar Saleh Mohammed firm which entered into agreement with HPC Limited on 05-02-1988 and later in the year 1990 one of the partner Keshavulu gave retirement letter and then on 09-01-1990 another partner was constituted and a partnership deed dated 09-01-1990 was submitted to HPC Limited on 30-01-1990 which was acknowledged by HPC Limited, reconstitution proposal format was

also submitted on 12-07-1990 and accordingly the oil supplies are continued and in the year 1999 Abdul Sattar died which fact is known to department officials. It is further submitted that the officials from Civil Supplies Department erstwhile Vigilance wing of Civil Supplies Department also made several inspections and nobody raised any objection and later the licence was also renewed and the same is valid and that without considering his explanation the 2nd respondent passed the impugned order dated 21-12-2005 and aggrieved by the said proceedings he filed appeal before the 1st respondent and the 1st respondent without considering the said factual aspects, grounds of appeal and written arguments filed by him dismissed his appeal by order dated 28-02-2006. In such circumstances, the petitioner approached this Court by filing the writ petition with a prayer, which had been already specified above.

The explanation to the show cause notice, the written arguments filed by the appellant, letter to M/s Abdul Sattar Saleh Mohd & Co dated 30-01-1990, reconstitution proposal format dated 12-07-1990, the partnership deed dated 09-0101990, and certificates dated 10-10-2005 and 18-11-2005 also had been relied upon.

In the counter affidavit filed on behalf of respondents, it is averred in para-2 that the licence bearing No. 3/1980 was issued by the Collector (CS) Nalgonda in favour of M/s Abdul Sattar Saleh

Mohd and Company, HPC Wholesale Kerosene Dealer of Bhongir town of Nalgonda District to carry out business in petroleum product at H.No. 1-1-186/10-A, main road, Bhongir town and mandal. The said license was issued to the proprietors of the said firm. As per the wholesale dealership granted by the HPC Ltd. Sri Abdul Sattar Saleh Mohd and Sri Keshavulu were the partners for the said firm and license was issued to the said firm to be operated by the said authorized partners. The place of business of the said firm was inspected by Dy. Tahsildar (CS), Bhongir on 8-9-2005 and noticed that the said firm has shown distribution of 24 KLs of PDS kerosene in the sales register without any mandal-wise/FP shopwise allotments issued by the Collector (CS), Nalgonda and the MROs concerned. Since the act of the firm in lifting and disposal of PDS kerosene without allotments is contrary to the instructions issued in Circular dated 02-05-2005 of Commissioner of Civil Supplies, A.P. Hyderabad and clause 24 of APPP (L & RS) Order, 1980, the inspecting official has recorded the statement of one Sri Md. Asif who had been found conducting business in the said firm and filed a report before the Collector (CS) Nalgonda, the licensing authority under the provisions of APPP (L& SR) Order, 1980. Since it was noticed that there are certain irregularities in lifting and distribution by the said firm, the license issued in favour of the said firm was suspended by the licensing authority vide proceedings dated 13-

09-2005 with a view to prevent further mal-practices and also to conduct detailed enquiry in the matter. Aggrieved by the said orders, the petitioner herein had filed W.P. No. 21024 of 2005 in the High Court of A.P. Hyderabad seeking stay of operation of the said orders issued in suspending the Form-B license No. 3/1980 duly setting aside the suspension orders issued by the Collector (CS), Nalgonda with a direction to take appropriate action in accordance with law. Accordingly, the license of the said firm has been restored as per the directions of the High Court. A show cause notice dated 06-10-2005 was issued and notice was served on the petitioner on 06-10-2005. Since the relief sought for by the petitioner in his representation dated 14-09-2005 was already fulfilled with the restoration of license, the question of non-consideration of his representation dated 14-0-9-2005 is not correct. The averments mentioned in para-2 of the affidavit of petitioner are totally false and frivolous. It is also averred in para-3 of the counter-affidavit that the allegations made against the petitioner in the suspension orders are based on detailed enquiry by the Deputy Tahsildar (CS), Nalgonda after conducting inspection of the business premises of the said firm. The petitioner found conducting business in the said firm is totally against the instructions of the Government. Neither the petitioner nor his son, who was present during the enquiry, represented the things that are mentioned in the affidavit before the enquiry officer. For the

sales recorded in stock registers, he failed to produce bill book in support of his explanation that he has distributed the stock to 29 FP shop dealers in the above mandals. The question of non-receipt of said quantity due to breakdown of vehicle as explained by the petitioner was not considered because the petitioner's agent i.e. his son did not disclose that they have lifted 12 KL of PDS kerosene on 06-09-2005, but the stocks were not received till the date of inspection. Further, the petitioner has falsely represented in his affidavit that he has received 12 KL. Kerosene, that was lifted on 06-09-2005 and on 08-09-2005 in the night at 8.30 pm. On the contrary, the petitioner himself made a false entry in the stock register on 09-09-2005 after the endorsement of the inspecting officer. The petitioner entered in the stock register that the stocks were received on 08-09-2005 at 7.00 am. This clearly shows that the petitioner made a false entry and failed to maintain true and correct account thereby contravened clause 12(1) of APPP (L & RS) Order, 19890 and conditions 6 (1) and 9 of the license issued to the firm. It is further stated that the contention of the petitioner that he has distributed entire kerosene quota to the concerned F.P. shop dealers of four mandals during the months of August and September, 2005 is not correct. The petitioner did not produce any evidence in support of breakdown of the vehicle en route. Since all these explanations are self-contradictory with each other and the said entries were made after

noticing diversion by the administration, the explanation of the petitioner worth's no considerations. It is also not true that the petitioner has supplied kerosene to the F.P. shop dealers. The FPS dealers have given written statement stating that they have not supplied with kerosene stocks as contended by the petitioner. Further, neither the petitioner nor his agent produced the bills to the inspecting officer. As per the instructions, the dealer is supposed to issue bill for the quantity of kerosene he deliver to the F.P. shop dealer at the time of physical delivery of stocks only, but the petitioner failed to do so and also failed to produce the bill book. Withholding bill book and bills by the petitioner for the sales entries made in sales register itself is a contravention and shows his intention to prepare fictitious bills to suit the false sales particulars he recorded in the register. Hence, the averments made in paras 4 and 5 of affidavit are incorrect. It is further averred in para-6 of the counter affidavit that this Court had disposed of W.P. No. 21024 of 2005 filed by the petitioner in the admission stage by setting aside the suspension orders dated 13-09-2005 passed by the Collector (CS), Nalgonda with a direction to pass orders in accordance with law. In compliance with the said orders, the license of the said firm was restored and a show cause notice dated 06-10-2005 was issued to the said firm claiming the charges with direction to submit its explanation for the charges and also to utilize the opportunity of personal hearing on 13-10-

2005. It is not correct that the petitioner was not given opportunity to represent his case and final orders were passed by the Collector (CS), Nalgonda. The appellant authority has called for the lower court records examined the grounds adduced in the appeal petition and also heard the arguments advanced by the counsel for the petitioner on 18-02-2006 and passed orders observing that the petitioner himself admitted in the written statement that he supplied kerosene to the F.P. shop dealers without getting allotment orders from MROs/Joint Collector, that as per the material filed by the petitioner, M/s Abdul Sattar Saleh Mohd. & Company entered into agreement with HPC Ltd on 05-02-1988 and alter on in the year 1990 one of the partner Sri K. Keshavulu was given retirement and firm constitution proposal format was also submitted to HPC Ltd. On 12-07-1990 and in the year 1999, the another partner Abdul Sattar Saleh Mohd. Died. The appellant authority also observed that the appellant did not produce any material on records to the extent of fresh agreement between HPCL and the petitioner and as per the Condition 12 of Form-B License issued under APPP (L & RS) Order, 1980 to the said firm, the license is not transferable when the ownership is changed and there is a clear violation of condition 12 of the license. Hence the respondents pray for dismissal of the writ petition with costs.

In the light of the respective stands taken by the parties to

the litigation, it may have to be seen whether the principal grounds raised by the writ-petitioner that the principles of natural justice had not been violated at all to be accepted or to be negatived in the peculiar facts and circumstances of the case.

The relevant portion of the impugned order reads as hereunder.

> "The case was called on 18-2-2006, the advocate for the appellant appeared and argued that he had already filed grounds in the appeal and no new grounds are there to argue and requested early disposal of the case.
>
> I have gone through the records of the Collector (CS) Nalgonda and the grounds of appeal and the written arguments filed on 09-01-2006 and other material filed by the appellant.
>
> As per the material on record, the appellant has lifted 36 KLs of PDS kerosene oil from HPC depot, Suryapet upto 08-09-2005 as indicated below.
>
> (i) 03-09-2005 invoice No. 5006267 : 12 KLs
> (ii) 05-09-2005 invoice No. 5006310 : 12 KLs
> (iii) 06-09-2005 invoice No. 5006381 : 12 KLs.
>
> Total 36 KLs
>
> But the person who was present at the time of inspection has given statement to the D.T. (CS), Bhongir, on 08-09-2005, that they have received only 24 KLs PDS kerosene i.e. on 04-09-2005 and on 06-09-2005 and distributed 25,100 liters of PDS kerosene oil to FP shops without getting allotment orders from the MROs/Jt. Collector. This was also admitted in the written arguments filed by the appellant herein.
>
> Subsequent enquiry report submitted by the Special team, consisting with DT (CS) Alair / Mothkur Sr. RI (Proc) Nalgonda and Bhongir and R.I. (CS), Suryapet) shows that the appellant not distributed 13880 liters of K.Oil (11040 liters for the month of August 2005 and 2840 liters for the month of September, 2005) to the F.P. shop dealers of Valigonda, B.Ramaram, Ramannapet and Bhongir mandals. Further, the appellant has not produced any documentary evidence

showing that he has distributed the above quantity of kerosene oil to the fair price shops.

According to the copy of dealership agreement dated 05-02-1988 Abdul Sattar Saleh Mohammed and K. Keshavulu are the dealers and the Form-B licence was issued in the name of M/s. Abdul Sattar Saleh Mohammed & Company, Bhongir to deal in PDS Kerosene.

The material filed by the appellant herein shows that Abdul Sattar Saleh Mohammed & Co., firm entered into agreement with HPC Ltd., on 05-02-1988. later in the year 1990 one of the partners K. Keshavulu was given retirement and firm reconstitution proposal format was also submitted to HPCL on 12-7-1990 and in the year 1999 Abdul Sattar Saleh Mohd died. As per the material on record, no fresh agreement between HPCL and the appellant is executed so far.

According to condition 12 of Form-B licence issued under the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980 licence should not be transferred to any other person or by the person to whom it is issued and in case of change in the ownership by transfer, lease or otherwise, a fresh licence shall be applicable by the person who has acquired such ownership. Hence, in case of change in ownership by transfer, lease or otherwise a fresh Form-B licence has to be obtained. Therefore, conducting business from 1990 by the appellant, on the name of M/s. Abdul Sattar Saleh Mohammed & Company, Bhongir though the ownership was changed, is a clear violation of Con. 12 of Form-B licence issued under the A.P.P.P. (L&RS) Order, 1980.

As discussed above it reveals that:

1. the appellant has distributed kerosene oil to fair price shops in September, 2005 without getting allotment orders from the authorities concerned.
2. the appellant has not entered 12 KLs of PDS kerosene in the stock register upto 08-092005 though he lifted 36 KLs of kerosene from the HPC Oil depot, Suryapet upto 06-09-2005 and also not informed the fact of lifting of 12 KLs on 06-09-2005 to the Inspecting Officer during the inspection held on 08-09-2005.
3. the appellant has not produced any documentary evidence showing that he has distributed 13880 (11040 liters for the month of August, 2005 and 2840 liters for the month of September,

2005) liters of kerosene oil to the fair price shops of Valigonda, B.Ramaram, Ramannapet and Bhongir which was allotted for distribution to card holders through F.P. shop dealers.

4. the appellant is conducting business from 1990 on the existing licence issued in the name of M/s. Abdul Sattar Saleh Mohammed & company, Bhongir through one partner namely K.Keshavulu was given retirement in 1990 and another partner Abdul Sattar Saleh Mohd died in the year 1999, no fresh agreement between HPCL and Sri Jahi Osman i.e. appellant is executed so far till the date, even after change of the ownership, which is a clear violation of condition 12 of Form-B licence issued under the A.P. Petroleum Products (Licensing and Regulation of Supplies) Order, 1980.

In view of the above, as the material submitted by the appellant and the record of lower Court proves the case against the appellant herein, I, therefore, not interested to interfere with the orders passed by the Collector (CS) Nalgonda in Progs. No. CS5/1435/2005 dated 21-12-2005. The appeal is dismissed accordingly."

Charges 1 to 5 had been specified in the show cause notice. The 2nd respondent, by order dated 21-12-2005 in proceedings No. CS/5/1435/2005, made an order in detail referring to the show cause notice, the charges framed and also referred to with a view to provide personal hearing to the authorized dealer, notices were given on 16-11-2005 and 6-12-2005 to appear before this Court. It is also stated in the said order,

"I have perused the connected records, gone through the written explanations and also considered the oral arguments made by the Advocate.

On verification of records, statements recorded during inspection by the Inspecting Officer it has been noticed that one Sri Haji Osman and his son Mohd. Asif are conducting business unauthorisedly in the name of M/s. Abdul Sathar Saleh Mohd & Company HPCL Dealer Bhongir. The Advocate who represented in the case himself admitted

before this Court that his client Haji Osman is now conducting business in the name of said firm and the authorized dealers are not doing business. Further he also admitted the fact that for the unauthorized conduction of business, his client is approaching the HPC Ltd., for transfer of dealership in his client's name. The existing agreement between the HPC Limited and M/s. Abdul Sathar Saleh Mohd & Company HPCL dealer, Bhongir clearly indicates that the person representing in the case is not a dealer on behalf of HPCL. Therefore, I am of the opinion that it is a crystal clear fact that Sri Osman Haji is a benami dealer (unauthorized person) conducting the business in the name of the said firm unauthorisedly and mislead the Hon'ble High Court of A.P. Hyderabad by way of false representation as he is the proprietor of the said firm in W.P. No. 21024 of 2005 and obtained directions for restoration of license. Hence, I hold that the charge is proved against him.

As regards diversion of 12 KL. Kerosene lifted from HPCL, Suryapet Depot on 06-09-2005 through ABV-1059 without entering the receipts in stock register till time of inspection, the explanation offered by the Advocate on behalf of unauthorized dealer is not acceptable. The person who was found conducting business at the time of inspection did not disclose the fact of lifting of 12 KLs kerosene through the above mentioned tanker on 6-9-2005. If the contention of the counsel for the Osman Haji is true, he would have inform to the Inspecting officials then and there itself. The stocks were lifted from the HPCL depot, Suryapet on 06-09-2005. But it is unbelievable that even if the breakdown was occurred it could have been reached the stock point well within the time since the distance between Suryapet and Bhongir is around (100) Kms. And the version of counsel that he is not aware of the breakdown of the vehicle is nothing but an after though to cover up the guilty of diversion of 12 KLs kerosene. The 12 KLs of kerosene pertains to public distribution stock which has to be supplied to the BPL families and Govt. is incurring heavy subsidy on the kerosene. It is a fact that there are no efforts whatsoever from the side of the dealer to take care and to inform to the officials concerned about the delay in getting

the stock to his tock point. Even at the time of inspection also he kept quite. Moreover without informing to the officials concerned he made an entry on 09-09-2005 ins tock register as if he received the stocks and produced the stock registers in the o/o DSO, Nalgonda. This clearly shows that the explanation offered by the Advocate on behalf of his client is nothing but an after though to escape from the clutches of law. Hence, I hold that the charge is proved against the respondents.

Regarding non-supply of 11040 ltrs. Of kerosene in August, 2005 and 2840 lts. Of kerosene in September, 2005 is also not convincing. All the documents that were produced by the respondent during personal hearing could be produced before the inspecting officials then and there itself and if they were true and nothing could have prevented them in doing so. The Inspecting Officers have conducted a detailed enquiry by approaching all the F.P. shop dealers located in (4) Mandals and not even a single dealer reported to the inspecting officials that they have received the stocks and they have given written statement to that effect also. This clearly establishes the fact that Osman Haji who is doing business unauthorise3dly got prepared the documents after the inspection to support his claim that he has supplied the kerosene. In view of this the documents furnished by the respondent cannot be taken as proof in support of his contentio0n that he has supplied the kerosene. Therefore, I hold that the charge is proved against the respondents.

Since all the charges leveled against the respondents are proved beyond doubt and admittedly it is a fact that the persons now conducting business on behalf of M/s. Abdul Sathar Saleh Mohd & Company HPCL dealer, Bhongir are not authorized either by the HPCL or by the Licensing Authority under the provisions of APPP (L&RS) Order, 1980, I am of the opinion that continuation of license in the name of M/s. Abdul Sathar Saleah Mohd & Company HPCL dealer, Bhongir is detrimental to the interests of public distribution system, as the unauthorized persons who bears no responsibility could divert/mis-use highly subsidized kerosene at any point of time. I, therefore, cancel the license bearing No. 3/1980 issued in the name of M/s. Abdul

> Sathar Saleh Mohd & Company HPCL dealer, Bhongir under the powers vested with me under clause 28 of APPP (L & RS) Order, 1980 duly forfeiting the entire security deposit in favour of Government."

This Court had given anxious consideration to the charges framed, the explanation submitted and the reasons recorded both by the original authority and also the appellate authority as well. On a careful reading of the proceedings impugned and also the material placed before this Court, this Court of the considered opinion that, absolutely there is no violation of principles of natural justice, the show cause notice was duly issued and an explanation was called for and the explanation was considered and an order was made, aggrieved by the same, the matter was carried by way of appeal and the appellate authority also made an order, which had been referred to above. In the light of the specific stand taken in the counter-affidavit and also in the light of the reasons recorded by both the first authority and also the appellate authority, this Court is of the opinion that the writ petition is devoid of merit and accordingly the same shall stand dismissed with costs.

The writ petition is, accordingly, dismissed with costs.

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P.S.

NARAYANA,J

Dated: -10-2007
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